IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.9389 OF 2003

M/s.Swastik Rubber Products Ltd. & anr.).. Petitioners

Versus

Komgassert Mehendra Kumar & ors.).. Respondents

Mr.C.U.Singh with Mr.K.S.Bapat for the Petitioners.

Mr.N.A.Kulkarni for Respondent Nos.1 to 137.

Mr.Bhanage for Respondent No.138.

Respondent No.139 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 25TH AUGUST 2004

P.C.:

. The order challenged is an order dated 27th November 2003 passed by the Industrial Court, Pune in Complaint (ULP) No.328 of 2003 refusing to review its own order passed on an interim application. By an order dated 13th November 2003, the Industrial Court, Pune had held that the Petitioners herein had engaged in an unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 by not paying earned wages of the applicants i.e. Respondent Nos.1 to 137 for the period from 8th June 2003 to 22nd June 2003 and by not providing work to the Applicants or allowing them to

resume duty. The Industrial Court had directed payment of the wages within fifteen days. The Petitioners herein were further directed to permit the Applicants to resume duty from 22nd November 2003 and in the event they were not so permitted to pay regular wages till the Complaint is finally decided. Aggrieved by this order, the Petitioners moved an application before the Industrial Court to review its earlier order. The Petitioners placed on record the fact that the recognised Union (which was not a party to the proceedings before the Labour Court) had entered into a settlement under Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 with them. Under this settlement, the recognised Union had agreed that the workers should be permitted to resume duty in stages and that they would not insist on payment of wages during the period when they remained idle. According to the Petitioners, this settlement which was signed on 19th November 2003 also stipulated that they should apply to the Industrial Court for a review of the order of 13th November 2003. The Industrial Court by its order of 27th November 2003 refused to review its earlier order.

2. The submission made before me on behalf of the Petitioners is that the Petitioners are in financial doldrums and were, therefore, required to sell of one of the plants at Khadki. They have transferred their

operations to Chinchwad where they were ready and willing to employ all the workers including the Complainants in Complaint (ULP) No.120 of 2003 in stages. However, none of the Complainants had shown their willingness to work at the place of transfer. It is in these circumstances that the Petitioners were unable to make any payment since they were attempting to revive the industry. It is further submitted that if the order of the Industrial Court passed on 13th November 2003 is allowed to continue, it would be impossible for the Petitioners to continue the process of reviving the Company. A submission is also made that the recognised Union having noticed the situation, has entered into a settlement on 19th November 2003.

3. Mr.Kulkarni for Respondent Nos.1 to 137 in the Petition submits that if the order of the Industrial Court is set aside, there would be no security for the workmen concerned as there is nothing on record to show how the wages which were due and payable to the workmen would be paid to them in case they succeed in the Complaint. He submits that in any event the workers are not been permitted to perform their duties for no fault of theirs for which the employer must give wages. According to the learned Advocate, unless the contract of service is terminated, the employer is required to continue to pay wages.

4. A statement is made by Mr.C.U.Singh, on instructions from his clients, that all the workmen who are interested in the employment will be given employment within three to four months from today. The Petitioners shall file affidavits in this Court within two weeks from today of (1) Ashok Muthana, Chairman and (2) Hemant Chavan, Executive Director, stating the exact date by which Respondent Nos.1 to 137 who are interested in employment will be given work.

5. The Industrial Court has, prima facie, found that the workmen had refused to join duty prior to 22nd September 2003 although suspension of operation of work was effected only on 22nd August 2003. The Industrial Court has found that the willingness expressed by the Respondent workmen to join work from 22nd September 2003 appeared to be with an oblique motive. The Industrial Court has directed payment of wages only on account of his interpretation of the Standing Orders applicable.

6. Prima facie, it appears that there is a settlement signed with a recognised Union under which the recognised Union has agreed that work should start in the Company in a phased manner and employees should be allowed to resume duty in stages. It has also been agreed that the workers would not get any wages during

the interregnum. In these circumstances, the Industrial Court ought to have reviewed it earlier order. It must be clarified that although there is a settlement signed, I am not making any comment about the legality or validity of that settlement or on its effect on the Complaint.

7. In these circumstances, the order of the Industrial Court, Pune dated 13th November 2003 to the effect that it direct payment of wages from 22nd November 2003 is quashed. The order of the Industrial Court, Pune dated 27th November 2003 is also set aside. Ashok Muthana, Chairman and Hemant Chavan, Executive Director, of the Petitioners, to file the affidavits within two weeks stating the date by which the workmen would be employed. Industrial Court, Pune to dispose of Complaint (ULP) No.328 of 2003 expeditiously and in any event by 31st March 2005.

8. In view of the above, Writ Petition disposed of accordingly.

9. Office to issue authenticated copy of this order.